

100 years since the Balfour Declaration  
50 years into the Israeli occupation

## Will Europe address Israeli Colonialism and Apartheid? The Case of Palestinian Jerusalem

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**Israel's current rule over the Palestinian people has all the features characteristic of colonialism and apartheid as defined in international law.**

### **Colonialism**

a system of foreign domination and exploitation that deprives a people of the right to self-determination and other fundamental human rights, for example through measures that violate the territorial integrity of the country, sovereignty over natural resources and the ability for self-governance (Based on: *Declaration on the Granting of Independence to Colonial Countries and Peoples* (UN General Assembly Resolution 1514 of 1960).

### **Apartheid**

inhumane acts of racial discrimination – such as persecution and forcible transfer – which are committed in the context of an institutionalized regime of racial domination and oppression, and with the intention of maintaining that regime (Based on: *Convention on the Suppression and Punishment of the Crime of Apartheid*, *Rome Statute of the ICC*).

# Since 1948, Israel has legislated the practice of colonialism and racial discrimination into laws. These Israeli laws are an institutionalized regime of racial domination and oppression of Palestinians:

## Israeli laws:

**Illustrative examples (See also, “Discriminatory Law Database”: [www.adalah.org](http://www.adalah.org))**

Establish a claim of Israeli sovereignty in all of pre-1948 Palestine; enable annexation of 1967 occupied Palestinian territory, including East Jerusalem

- *Area of Jurisdiction and Powers Ordinance, No. 29 of 5708-1948* (22 September 1948)‘ *Law and Administration Ordinance, Section 11 B* (27 June 1967) adopted for the annexation of occupied East Jerusalem;
- *Legal and Administrative Matters (Regulation) Law (Consolidated Version)* (1970), explaining how Israeli laws are to be applied in East Jerusalem, permitting claims for pre-1948 Jewish property in East Jerusalem but not claims for pre-1948 Palestinian property in West Jerusalem; *Basic Law “United Jerusalem, Capital of Israel”* (1980); *Law on the Regularization of Settlement in Judea and Samaria 5777-2017* (6 February 2017).

Create and maintain Jewish superiority

- *Law of Return* (1950) and *Israeli Citizenship Law* (1952) establishing the privileged group of “Jewish nationals of Israel”;
- *Basic Law: the Knesset* (1958), *Amendment 9* (1985) providing that Israel is the “state of the Jewish people”, allowing exclusion parliamentary elections of political parties that challenge this principle;
- *Basic Law: Human Dignity and Liberty* (1992) restricting fundamental human rights with the proviso that these must be in conformity with the values of Israel as a “Jewish and democratic state”.

Confer inferior civil status and rights to Palestinians

- *Israeli Citizenship Law* (1952): excludes (descendants of) Palestinian refugees from status and rights in Israel; defines Palestinians under Israeli rule since 1948 as “Israeli citizens” without a nationality and group rights;
- *Entry into Israel Law* (1952), *Entry into Israel Regulations* (1974): applicable to foreign citizens but also applied to East Jerusalem Palestinians, making them “permanent residents of Israel” without a legal right to stay, return or unite with family members; *Citizenship and Entry into Israel Law* (2003, amended in 2007): prohibiting family unification in Israel and occupied East Jerusalem with spouses and children from the West Bank, Gaza Strip and designated Arab countries.

Enable permanent appropriation of Palestinian land and property by the State of Israel and the Jewish National Fund (JNF) for the benefit of Israel’s Jewish population

- *Absentees’ Property Law* (1950), *Development Authority (Transfer of Property) Law* (1950); *Land Acquisition for Public Purposes Ordinance* (1943, incorporated British Mandate law); *Land Acquisition (Validation of Acts and Compensation) Law* (1953); *World Zionist Organization -Jewish Agency “Status” Law* (1952); *Keren Kayemet Le-Israel/JNF Law* (1953); *Covenant with Zionist Executive* (1954); *Basic Law: Israel Lands* (1960); *Israel Land Administration Law* (1960); *Israel Land Administration (Land Reform) Law* (2009)

Restrict Palestinian construction and development of Palestinian communities

- *National Planning and Building Law* (1965) and subsequent laws pertaining to planning, zoning and construction.

Do not prohibit torture; permit deprivation of physical liberty and freedom of expression of those who oppose Israeli colonialism and oppression of Palestinians

- *State of Emergency* (1948); *Defence (Emergency) Regulations* (1945, incorporated British Mandate law); *Nakba Law* (2011); *Anti-Boycott Law* (2011); *Foreign Government Funding Law* (2011); *NGO Transparency Law* (2016); *Entry into Israel Law (Amendment No. 27) (Denying a Visa and Residency Permit for Advocates of Boycotting Israel)* of 2017.

# Israeli Apartheid and Colonialism in Jerusalem

Equipped with these and similar laws, Israel has systematically and severely deprived Palestinians of fundamental human rights in Jerusalem by means of policies and measures which constitute acts of colonialism and apartheid:

## 1948 – 1960s:

Preventing reversal of the ethnic cleansing of Palestinians of 1947-8, ensuring that West Jerusalem would remain a Jewish-Israeli city. 60 - 80,000 Palestinian refugees from the area of Israeli West Jerusalem, including urban population and villagers, were deprived of their right to return. Their properties, including some 10,000 urban homes and 35km<sup>2</sup> of land (equal to 60-80% of Israeli municipal Jerusalem after 1948) were confiscated and used for the settlement of Jewish population in the city.<sup>1</sup>

## June 1967:

Annexation *de facto* of occupied East Jerusalem (70km<sup>2</sup> of the occupied Palestinian West Bank), including the Old City, adjacent Palestinian neighbourhoods and land of 28 nearby Palestinian villages.

**Annexation set the stage for Israeli apartheid and settler colonialism in occupied East Jerusalem.**

- It was carried out with the declared aim of changing the character and status of Arab-Palestinian Jerusalem to a Jewish-Israeli city, part of “United Jerusalem, Capital of Israel” (Basic Law, 1980);
- It made Israel’s discriminatory system of laws applicable in the occupied city.
- Added to this was Israel’s doctrine of so-called “demographic balance”, a public policy guideline upheld since the early 1970s and stipulating that a Jewish majority of roughly 70% must be preserved in (West and East) Jerusalem.

Backed by laws, courts and public policy, Israel’s governments, ministries and Jerusalem municipality have carried out their coercive endeavor of making occupied East Jerusalem Jewish-Israeli, by boosting the settlement of Jewish population and constructing the illegal Wall, while making space for the illegal settlement enterprise by targeting the Palestinian population with policies and measures that amount to persecution and forcible transfer.



# Persecution and forcible transfer of Palestinians in/from occupied East Jerusalem

## Israeli policies and measures

Military closure of the city (checkpoints, permit system, the Wall)

Exclusion from/revocation of Jerusalem residency permits and ID cards

Arbitrary restriction of registration of children and family unification in East Jerusalem; since 2003, no family unification for spouses and children holding West Bank or Gaza ID

Permanent appropriation of Palestinian land, homes and businesses, sometimes accompanied by forced evictions

Discriminatory town planning and zoning; no public housing for Palestinians, private Palestinian construction permitted in 13% of East Jerusalem only; construction permits rarely granted; homes built without permits are demolished

Cutting off certain East Jerusalem neighborhoods from the city center with the Wall; plans to remove these areas from the municipal area; minimal public services and no law enforcement

Closure orders against Palestinian institutions, NGOs and events promoting awareness of Palestinian history, culture and rights; censorship of Palestinian school books and pressure on East Jerusalem schools to adopt the Israeli curriculum

Excessive, indiscriminate or deliberate use of armed force against Palestinian protestors, including children; mass arrests, torture and inhuman treatment during detention; collusion with settler violence; collective punishment of East Jerusalem families and communities; arbitrary denial of entry into Israel and the OPT to foreign citizens, suspected supporters of the Palestinian people.

## Effects/consequences for Palestinians

More than 4 million Palestinians (West Bank and Gaza) deprived of the right to enter their city  
De-development of East Jerusalem

Deprivation of civil status and all rights under Israeli law; affected are at least 30,000 East Jerusalem refugees (1967)<sup>2</sup> and 14,500 residents<sup>3</sup> and their families

Forced separation of families; in the best case, temporary Jerusalem permits for children and spouses and no access to Israeli health and social services

Expropriation and forcible displacement. More than one third of East Jerusalem land confiscated and allocated for Israeli settlement infrastructure

Severe housing crisis in the city, forcing Palestinians to seek housing outside the Wall or city boundaries; 641 home demolitions (2004-2016) forcibly displacing 2,358 persons and depriving families of homes for their children<sup>4</sup>

80,000 Palestinians are estimated to live in East Jerusalem neighborhoods behind the Wall, in slum-like conditions, without adequate public services, and in uncertainty about their future status and rights in the city.

More than 30 Palestinian institutions closed since 2001, pushed to relocate to PA administered areas. East Jerusalem Palestinians, including children, deprived of freedom of expression and the right to develop their Palestinian culture and identity.

1,300 Palestinians detained, 40% of them children (June- Nov. 2014); 36 shot dead and 2,924 injured (2015); military closure and night-time raids of Palestinian neighborhoods; violence, fear, humiliation: negative impact on psycho-social health, especially among children and youth; lack of hope; pressure on parents to relocate, find a safer environment for their children.

# Recommendations to the EU, Member States and their Delegations and Missions in East Jerusalem, Ramallah and Tel Aviv:

## Acknowledge the facts:

the illegal Israeli settlements, annexation *de facto* of occupied Palestinian territory and forcible displacement of Palestinians are expressions of a system of apartheid and settler colonialism. European efforts and investment in Israeli-Palestinian peace making based on a two-state solution are wasted, until Israel apartheid and colonialism are addressed as required under international law.

## Carry out practical measures which ensure that Europe gives no recognition or material support to apartheid and colonialism and support accountability:

the following measures can and should be adopted by the EU and member states based on their respective laws and already existing EU instruments:

→ **Suspend the EU-Israel Association Agreement (trigger its human rights clause) until Israel meets its IHL and human rights obligations:**

- Ensure full application of the *EU Human Rights and IHL Guidelines*;<sup>5</sup> and engage Israel for reform of its discriminatory system of laws, and for steps to end and reverse its illegal policies of Jewish settlements and *de facto* annexation of occupied Palestinian territory, and persecution and forcible transfer of Palestinians;
- Establish that approval of a new Action Plan with clear tasks and benchmarks for both is a condition for the resumption of cooperation under Association Agreement;

## In the meantime:

→ **Exclude from EU financing and participation in EU research programs (Horizon 2020, FP9) all Israeli entities, located or operating in occupied East Jerusalem or elsewhere in the OPT, foremost Israeli ministries, national authorities and companies providing arms, military and dual-use equipment and security services.** Among these Israeli Ministry of Public Security, police and their Horizon 2020 project “Law Train”, Elbit, IAI, Israeli banks, as well as the ministries of finance, interior, justice, transport and education, the Jerusalem Municipality and its Development Company, the Israeli Water Authority Mekorot, the Antiquities Authority and the National Parks Authority. **EU support, even if indirect, of Israeli entities which drive the illegal settlement policy and the oppressive military and law-enforcement regime that facilitates the former contradicts the purpose of the 2013 EU *Financing Guidelines*.**<sup>6</sup> **The flagrant violations of IHL and human rights committed by these entities require their exclusion on the grounds of “grave professional misconduct” (EU *Financial Regulation*, Article 106 (1)(c)).**<sup>7</sup>

→ **Ban all import into the European market from Israeli companies operating in the OPT, including East Jerusalem:** in light of the failure of all previous efforts to establish with Israel a reliable and workable mechanism for implementation of the EU *rules of origin*, this measure is necessary to end indirect support of the illegal settlements by the EU and member states – free trade benefits of the Association Agreement for Israeli produce originating from the OPT and revenues from its sale in Europe – and on grounds of European consumer protection.





→ **Assist the UN initiative for a list of companies whose business activities support the illegal settlements in the OPT, including East Jerusalem, as a public tool for ensuring that companies respect IHL and human rights and terminate unlawful business:**

applying the *UN Principles on Business and Human Rights* and the *EU Human Rights and IHL Guidelines*, European governments and the EU can and should:

- Provide diplomatic and financial support to the publishing, promotion and further updating of the UN database of business companies of concern;
- Engage with UN-listed companies headquartered in EU member states to clarify how they will terminate business activities that contradict IHL and human rights in the OPT;
- Issue and widely publicize business-advisories in this regard; ensure that all companies of concern are informed, including those involved in business with the illegal Jerusalem Light Rail and tourism operators which market occupied East Jerusalem as an Israeli city.

→ **Facilitate ICC investigation and prosecution of war crimes and crimes against humanity committed in the OPT:** in accordance with international obligations, including those under the Rome Statute of the ICC, EU member states and the EU can and should:

- Provide assistance as needed for a speedy conclusion of the ICC's preliminary investigation, including assistance with fact-gathering, monitoring and documentation in the OPT and Israel by EU delegations and member state missions or third parties.

→ **Request full refunding of the cost of Palestinian infrastructure financed by the EU or members states and destroyed by Israel**

**EU member states whose citizens - aid workers, human rights defenders, students, tourists or pilgrims - are arbitrarily denied access to the OPT, including East Jerusalem, by Israeli border police based on the declared Israeli policy (recently clad into law) of denying entry into Israel to supporters of the Palestinian people can and should apply the principle of reciprocity in their visa policy concerning Israelis.**



Photo credit:

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Footnotes:

1. Salim Tamari (ed), *Jerusalem 1948. The Arab Neighbourhoods and their Fate in the War*, Institute of Jerusalem Studies and Badil Resource Center, 2002

2. Sources in: *Eviction, Restitution and Protection of Palestinian Rights in Jerusalem*, Badil (1999).

3 <http://www.hamoked.org/Document.aspx?dID=Updates1717>

4. B'tselem statistics updated on 20 October 2016: [http://www.btselem.org/planning\\_and\\_building/east\\_jerusalem\\_statistics](http://www.btselem.org/planning_and_building/east_jerusalem_statistics).

5. *EU Guidelines Human Rights and International Humanitarian Law* (2009): [https://eeas.europa.eu/human\\_rights/docs/guidelines\\_en.p](https://eeas.europa.eu/human_rights/docs/guidelines_en.p)

6. Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards, *Official Journal of the European Union*, 19 July 2013.

7. Regulation (EU, Euratom) n° 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, O.J. L 298/1 of 26.10.2012, as amended by Regulation (EU, Euratom) n° 2015/1929 of the European Parliament and of the Council of 28 October 2015, O.J. L 286/1.

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